

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MIKE ALLEN,

Plaintiff,

v.

KADEN ADAMS,

Defendant.

Case No. 21-1221-JAR-KGG

MEMORANDUM AND ORDER

Plaintiff Mike Allen brought this action *pro se* against Defendant Kaden Adams, a tax preparer, claiming that Defendant discriminated against him based on his disability. On November 12, 2021, the Court granted Defendant's motion to dismiss for failure to state a claim and dismissed this case without prejudice. Before the Court is Defendant's Motion to Alter or Amend (Doc. 21), asking that the Court dismiss this matter with, rather than without, prejudice. Plaintiff has not responded and the time to do so has passed. As such, this motion may be granted as uncontested under Local Rule 7.4(b).

Defendant's motion is also granted on the merits. Under Fed. R. Civ. P. 59(e), the Court may alter or amend judgment on the following grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice.¹ "Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law."² As stated in Defendant's motion, the authority cited by the Court in support of dismissal without leave to amend indicates

¹ *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir 2000) (citing *Brumark Corp. v. Samson Res. Corp.* 57 F.3d 941, 948 (10th Cir. 1995)).

² *Id.*

that dismissal with prejudice, rather than without prejudice, is appropriate here.³ The Court therefore grants Defendant's motion in order to correct this error and dismisses this case with prejudice.

IT IS THEREFORE ORDERED BY THE COURT that Defendant Kaden Adams's Motion to Alter or Amend (Doc. 21) is **granted**. This case is hereby **dismissed with prejudice**.

IT IS SO ORDERED.

Dated: December 16, 2021

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

³ *Knight v. Mooring Capital Fund, LLC*, 749 F.3d 1180, 1190 (10th Cir. 2014) (quoting *Gee v. Pacheco*, 627 F.3d 1178, 1195 (10th Cir. 2010)).